

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

CRL.A.No. 446 of 1999()

**CC.333/1991 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVUR
AGAINST THE ORDER OF THE ADDL.SESIONS JUDGE,
ALAPPUZHA IN MC. NO.2/1999.**
.....

APPELLANT: 2ND COUNTER PETITIONER

**THANKAPPAN, CHITTEZHATHU VEEDU,
KOMALAPURAM SOUTH ARYAD.**

BY ADV. SRI.S.SANAL KUMAR

RESPONDENT: RESPONDENT

**STATE OF KERALA, REP.BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B.KOSHY, J.

Crl. Appeal No. 446 of 1999

Dated this the 21st day of February, 2007

Judgment

Appellant herein stood as surety for one Pushpan who was an accused in a Sessions Case pending before the Additional Sessions Court, Alappuzha. The above accused failed to appear before the court despite several opportunities were granted. Notices were issued to the appellant and other sureties, but, accused was not produced. After bond was forfeited, notice was issued against the appellant along with the other sureties. At paragraph 10 of the order, it is stated as follows:

"10. As evidenced by his own sworn statement he also played fool to get a man out of the clutches of law. Such a person is not entitled for the clemency of the court. Moreover the accused still remains unapprehended. Therefore I see no reason to grant any remission as such the 2nd counter petitioner is directed to pay a penalty of Rs.10,000/-. Issue distress warrant for realisation of the sum."

Case was registered against the sureties only after bond was forfeited. Proceedings were initiated under section 446 by issuance of show cause notice. Before passing the order, hearing was also granted. A surety who undertakes

to produce the accused on all hearing of the trial or till disposal of the case exposed himself to the penalty of forfeiture for non-appearance of the accused. Except that the accused is unable to be traced out by him, no other reasons were stated by him. A plea that surety is poor is not at all a ground. Such people should not have executed the bond. A lenient view in such case may pave way to the accused to jump bail and it will affect the criminal justice system. Amount of Rs.10,000/- imposed as penalty considering the bond amount is not excessive.

2. Appellant appeared before the Sessions Court and pleaded that a lenient view may be taken as he was unable to trace out the accused. On the facts of the case, no case is made out for taking a lenient view. The court below directed to pay the penalty and directed to issue distress warrant to realise the same. I see no illegality or impropriety in the order passed by the court below.

3. It is prayed that the appellant may be allowed to pay the amount in instalments. When the appeal came up for admission, a stay was granted for three months provided petitioner deposits Rs.3,000/-. Evidence was not produced to show that the above amount was paid. However, on the facts and circumstances of the case, the appellant

is allowed to deposit the penalty (balance, if part is already deposited) in monthly instalments at the rate of Rs.2,000/- per month on or before 30th of every month, first instalment starting from 30th March, 2007. In default of payment of any of the instalments, distress warrant shall be issued for realising the entire amount.

There is no merit in the appeal. Appeal is dismissed subject to the above direction.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy, J.

Crl. A. No.446 of 1999

Judgment

21-2-2007

